FOR MYSORE STATE

PUBLIC WORKS **(195 4) Department.**

SERIES.

G.O. NO. MS.2122.

Dated 15th June 1954.

[Despatch Abstract.]

Electricity--Mangalore Company electrical undertaking--Hiring of 500 K.W. diesel set and accessories to Mangalore licensee company--Revised draft agreement--Approved.

CONFIDENTIAL

Government Electricity Department

From

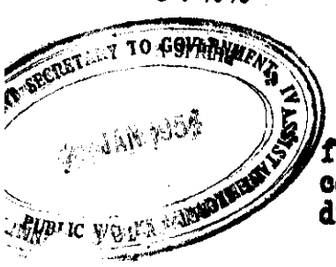
The Chief Operation Engineer (South),
157, Mount Road, Madras-2.

To

The Secretary to Government,
Public Works Department,
Fort St. George, Madras-9.

No.1360-E/53-30, dated 18th Jan. '54.

5722



Sir,

Sub: Electricity - Mangalore Electrical Undertaking - Hire of 500 K.V. set - Agreement.

--x--

Ref-

I send herewith a copy of the draft agreement as finally accepted by the Mangalore Licensee after a protracted correspondence. I request approval of Government to this draft agreement at an early date.

nc/19.1.
Encl: 1 Draft Agreement.

FOR CHIEF OPERATION ENGINEER (SOUTH).

D R A F T.

AN AGREEMENT made this ..... day of..... One thousand nine hundred and ..... Between THE GOVERNOR OF MADRAS (which expression shall include his successors and assigns) of the One Part, And THE MANGALORE ELECTRIC SUPPLY COMPANY LIMITED, a Company registered under the Indian Companies Act and having its Registered Office at No.14, Old Court House Street, Calcutta, (hereinafter called "the Hirer" which expression shall include its successors and assigns) of the Other Part.

WHEREBY IT IS AGREED as follows:-

1. The Government of Madras (hereinafter called "The Government") shall let on hire to the Hirer and the Hirer shall take on hire from the Government from the .....day of.....one thousand nine hundred and .....until the Electrical Undertaking of the Hirer is taken over by the Government or until the hiring shall be terminated as hereinafter mentioned, whichever is earlier, the Generating Plant and Equipment detailed in the Schedule hereto (hereinafter referred to as "the said Machinery").

2. The Hirer shall during the hiring punctually pay to the Government at the Office of the Superintending Engineer, Pykara Electricity System, Coimbatore, and without previous demand as half-yearly rent for the hire of the said Machinery, the Sum of Rs.22,000/- (Rupees twenty-two thousand only) or such other amount as may from time to time be decided or agreed upon by or between the parties, the first of such payments to be made on the day, erection of the said Machinery is commenced at the Power Station at Mangalore, and the subsequent payments to be made

on the corresponding day in each subsequent half year. Provided always that in the event of the hiring being determined under any of the provisions in that behalf herein contained the rent or hire payment for the half year then current shall be apportioned to the date of determination. A rebate of fifty per cent of the hire charges shall be allowed for the period from the date of commencement of erection of the said Machinery to the date on which it is put into regular commission (the dates of commencement of erection and of commissioning to be notified by the Hirer to the Government), provided the said Machinery is installed within a reasonable time fixed by the Chief Engineer for Electricity to the Government (hereinafter called "the Chief Engineer"). Notwithstanding the date of commencement of hire charges the responsibility of the Hirer for the said Machinery shall commence on the of taking over at the Hirer's Mangalore Power House.

3. The transport and delivery of the said Machinery at the Railway Station nearest the place where the said Machinery is to be installed will be effected by the Government, and the cost of such transport and delivery will be added to the price of the said Machinery. The unloading at the Railway Station together with the transport to and erection of the Machinery at the site of the Hirer including foundations, structures, etc. at the premises of the Hirer for the installation of the plant shall be done by the Hirer at his cost.

4. The Hirer with the written consent of the Chief Engineer shall have the option of purchasing the said Machinery by paying to Government a sum equivalent to its

book cost less depreciation or the fair-market value at the time of purchase, whichever is higher, and upon payment of the depreciated cost or market value and of all monies due from the Hirer to the Government under the provisions of this Agreement the Hirer shall become the absolute owner of the said Machinery, and the hiring shall thereupon terminate.

5. The Hirer may at any time terminate the hiring by delivering the said Machinery to the nearest Departmental Store and paying all monies due to Government under this agreement.

6. The Hirer shall during the continuance of the hiring keep the said Machinery in its own custody in its Power House at Mangalore, and shall not sell, offer for sale, assign, transfer, pledge, mortgage, underlet or lend the said Machinery or the Hirer's interest therein or the Hirer's rights under this Agreement or otherwise part with possession of the said Machinery or any part thereof or assume the ownership of the said Machinery or any part thereof or cause or permit the same to be removed from the said Power House.

7. The Hirer shall during the hiring allow the Chief Engineer or any persons or persons duly authorised by him thereunto at all reasonable hours to enter the said Power House to inspect the condition of the said Machinery.

8. The Hirer shall during the hiring punctually pay all rents, rates and taxes, licence fees, duties, charges, impositions and other outgoings due and payable in respect of the said Power House and Machinery, and will take

Receipts therefor, and will when demanded in writing forthwith produce for inspection to the Chief Engineer or other person or persons duly authorised by him the Receipts for the then last respective payments due in respect thereof

9. From the date of taking over at the Mangalore Power House the Hirer at his own expense shall keep the said Machinery in good and substantial repair and in working order (reasonable use and fair wear and tear thereof excepted), and shall insure the said Machinery against all risks including fire (not caused by wilful or negligent act of the Hirer, his servants or agents), accident, storm, tempest, earthquake or other irresistible force or Act of God, civil commotion, riot or political disturbance (or other unusual cause), and will indemnify the Government against all loss or damage to the said Machinery from whatever cause or under whatever circumstances arising, and replace at his own expense any part or parts becoming defective or unserviceable, and no alteration in or addition to the said Machinery shall be made without the previous written sanction of the Chief Engineer, provided that the Hirer shall not have or be deemed to have any authority to pledge the credit of the Government for the repair of the said Machinery or to create any lien upon the said Machinery in respect of such repairs.

10. If the Hirer at any time during the hiring shall be desirous of executing or creating any mortgage, encumbrance or charge of or upon the premises in or upon which the said Machinery shall for the time being be, it shall give the Chief Engineer one calendar month's previous notice of its intention so to do.

11. If the Hirer shall make default in the payments mentioned in the Clause two of this Agreement (whether the same shall have been demanded or not) or does not observe or perform or shall commit a breach of any of the terms and conditions of this Agreement or if execution or distress is levied upon the said Machinery or any part thereof or upon the Hirer's interest in the said Machinery or if the Hirer shall go into liquidation (except for the purpose of reconstruction or amalgamation) or have a Receiving Order made against it or enter into any agreement or composition with its creditors or shall execute or create any mortgage, encumbrance or charge upon the said premises (without the consent of Government which shall not be unreasonably withheld), then in any of the said cases the Chief Engineer may by notice in writing terminate the hiring although the Government or the Chief Engineer may not have taken advantage of a previous default of a like nature.

12. If the hiring is terminated under Clause one or eleven of this Agreement, the Hirer shall forthwith deliver up the said Machinery at the Hirer's risk and cost to the Government or some person duly authorised thereunto by the Chief Engineer at Mangalore, and in default of such delivery the Chief Engineer or the agents, servants, workmen and others in the employ or on behalf of the Government and all other persons authorised by the Chief Engineer may may without previous notice enter the said premises and unfix, seize and remove the said Machinery and resume possession of the same.

13. The Chief Engineer may at any time or times during the hiring pay any sum or sums which may be necessary

for the protection of the said Machinery or for the purpose of regaining possession of the same, and thereupon all such payments together with interest thereon at the rate of six per cent per annum shall forthwith on notice being given to the Hirer ~~shall forthwith~~ become due and payable by the Hirer to the Government.

14. If the hiring is terminated under Clause one or eleven of this Agreement, the Government may notwithstanding the seizure of the said Machinery or the return of the same either by the act of the Hirer or under process of law recover from the Hirer by action all hire rent in arrear on the datem of termination of the hiring and any costs, expenses and payments incurred or made by Government or the Chief Engineer in connection with the obtaining possession of the said Machinery or otherwise in relation thereto and all other monies due by the Hirer to the Government under this Agreement and also all damages which the Government may sustain in consequence of any breach by the Hirer of the terms of this Agreement.

15. If the hiring is determined under Clause eleven of this Agreement and if immediately upon such determination the Hirer delivers up the said Machinery to the Chief Engineer or permits the Chief Engineer to retake possession of the same without molestation or interruption, then the Hirer shall have the right to purchase the said Machinery upon such terms as to price and payment as may be agreed upon between the Hirer and the Chief Engineer, or to resume the hiring upon terms and conditions similar to those of this Agreement and as if no breach of this Agreement had been committed by the Hirer, Provided the Hirer within ten days of such determination deposits with the Chief Engineer the sum of Rs.22,500/-

Rs.22,500/- (Rupees twenty-two thousand five hundred only) in cash as security for the due performance of the terms of the fresh Agreement to be entered into between the parties, Provided also that the Hirer shall within one month of such determination pay to the Government all monies due from the Hirer to the Government under this Agreement at the date of such determination and also pay to Government all costs, charges, payments and expenses incurred, made or sustained by the Government in or about tracing, seizing, taking and obtaining possession of the said Machinery and in or about the removal, carriage, warehousing and redelivery of the same. No interest will be paid for the said security deposited by the Hirer.

16. All amounts due to the Government under this Agreement shall if not paid when due be recovered by the Government as if they were arrears of revenue, and shall also bear interest at the rate of six per cent per annum from the date on which they so fall due up to the date of payment or recovery.

17. Any notice required to be given by the Government or the Chief Engineer under this Agreement shall be in writing signed by the Chief Engineer, and may be served on the Company at its Registered Office or affixed or left at the said Office or sent by registered post addressed to the Hirer at the aforesaid Registered Office, and any notice required to be given by the Hirer under this Agreement shall also be in writing and sent by registered post to the Chief Engineer aforesaid.

18. Any dispute or difference arising between the Company and the Governor as to the interpretation of this Agreement or the right of the Government or of the Company respectively to determine the same or any other question, matter or thing arising hereunder, such difference shall be referred to a single Arbitrator who shall be mutually agreed upon by both parties. The Arbitrator's decision thereon shall be final and the provisions of the Indian Arbitration Act of 1940 or any other statutory modifications thereof for the time being in force shall apply to any such reference.

Upon every or any such reference the costs of and incidental to the reference and the award respectively shall be subject to the condition that the amount of such costs to be awarded to either party shall not in respect of a monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, costs and expenses incurred by either party, be in the discretion of the Arbitrator who may determine the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom, to whom and in what manner the same shall be borne and paid.

The percentages above referred to in this Clause are five per cent on any such monetary award which does not exceed Rs.10,000/-, three per cent on the next Rs.40,000/- or any part thereof, two per cent on the next Rs.50,000/- or any part thereof, and one per cent on any excess over Rs.1,00,000/-.

IN WITNESS whereof Sri..... Chief Engineer for Electricity acting on behalf and by order and direction of the Governor of Madras has set his hand hereto and the Common Seal of the Mangalore Electric Supply Company Limited was hereunto affixed the day and year first above written.

SCHEDULE:

(Schedule of Generating set, switchboard, controlling gear, auxiliaries, connected equipments).

Signed, Sealed and Delivered on
behalf of the Governor of Madras
by.....
in the presence of:

CHIEF ENGINEER FOR ELECTRICITY.

The Common Seal of the Mangalore
Electric Supply Company Limited
was hereunto affixed in the
presence of:

Government Electricity Department

From
The Chief Operation Engineer (South)
157, Mount Road, Madras-2

To
The Secretary to Government,
Public Works Department,
Madras-9

SECRETARY TO GOVERNMENT
12 FEB 1954
PUBLIC WORKS DEPARTMENT
11672

No.1360-E.53-34/dated 6-2-54

Sir,

Sub: Electricity--Mangalore Company Electrical undertaking - Hiring of 500 K.W. diesel set and accessories to Mangalore licensee company Draft agreement

In P.W. G.O.Ms.No.132 dt.12-1-54 the Government have approved of the draft agreement for being entered into by this Department with the Mangalore Electric Supply Company Ltd. for the hiring to the Mangalore Electric licensee of the 500 K.W. diesel set and accessories ordered by this Department for the Mangalore Electrical undertaking. In my letter No.1360-E/53-30 dated 18-1-54, I have forwarded a copy of draft agreement as finally accepted by the Mangalore licensee. It can be seen therefrom that there are no changes in most of the clauses. Clauses 2,3,4,8,9 & 16 approved in the G.O. referred to above will require modification in the light of what has been agreed to by the Mangalore licensee now.

During the discussions with the Resident Engineer of the company on 8-10-53, it was agreed that the hire charges may be levied from the date of commencement of erection and that the set may be taken over by the licensee immediately. The Department also insisted on the retention of the existing provision viz. that transport and erection charges will be on the licensees' account. It was also agreed that clause 4 would be amended to provide for payment by the licensee of the bookcost less depreciation or the market value whichever was higher in the event of the licensee exercising the option to purchase the set anytime during the agreement. Regarding clause 8, it was contended by the licensee that under the agreement he is required to maintain the set in good order and that in view of this responsibility there is no need for him to bear the cost of inspection of the suppliers' Engineer. With reference to the discussion referred to above, the clauses approved by the company previously have been revised.

The idea behind the clauses 9 and 16 approved in G.O.Ms.No.132, dated 20-1-54 is that the responsibility for the safety of the set during the hire period will vest with the licensee and he should necessarily insure it for the entire hire period. The latest revision of the clause 9, sent by me in letter No.1360 E/53-30/18-1-54 appears to achieve the above purposes. I, therefore, request that the clause as suggested by the company now may be retained instead of the original clauses 9 and 16.

In the circumstances explained above, the revision of some of the clauses by the company is in order. I, therefore, request early approval to the latest draft agreement sent to Government in letter No.1360-E/53-30 dated 18-1-54.

for Chief Operation Engineer (South)

Bn.9-2

5722/54

Urgent.

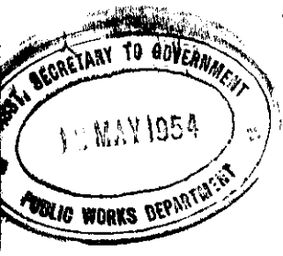
Government Electricity Department

From
The Chief Operation Engineer, South
157, Mount Road, Madras-2

40304

To
The Secretary to Government,
Public Works Department,
Madras-9

No.1360-E/53-43/dated 13-5-54



Sir,

Sub: Electricity - Mangalore Electrical undertaking--Hire of 500 K.W. set
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I request very early orders on my letter No.1360-E/53-30 dated 18-1-54 and 1360-E/53-34 dated 6-2-54.

for Chief Operation Engineer/South

Bn.15-5

Main file sent to Secretariat Dim. dept. on 12/4/54.
It is received back on 1.7.54, whichever is earlier.
May/o file ~~is received~~ (Reminder was issued on 10/5/54).

P.W.D.(I-2).

SUB: ELECTRICITY - Mangalore Co. elecl. undertaking - Hiring of 500 K.W. diesel set and accessories to Mangalore licensee co. - Revised draft agreement - Approved.

Read again: G.O.Ms.No. 132, P.W., dated 12.1.1954.
Read also: From the C.O.E.(S)# No.1360-E/53-34, dated 6.2.1954.

-:-

G.O.MS.NO. 2122 DATED 15-6-54

In modification of the orders in para 1 of G.O.Ms.No. 132, P.W., dated 12.1.1954, the Govt. approve the revised draft agreement, as appended to this order, for being entered into by the Govt. Elecy. Deptt. with the Mangalore Electric Supply Company Limited for the hiring to the Mangalore electric licensee company of the 500 K.W. diesel set and accessories ordered by the Govt. Elecy. Deptt. for the Mangalore electrical undertaking.

To
The C.O.E.(S).
The A.G. through Finance.

3 S/cs.(with encl.).

APPENDIX.

(H.E. the copy of the Agreement at (N) as amended).

Draft Agreement (N) PWD 21
with reference to Technical Notes.

AN AGREEMENT made this..... day of .....One thousand nine hundred and..fifty four.. between THE GOVERNOR OF MADRAS (which expression shall include his successors in office and assigns) of the One Part, and THE MANGALORE ELECTRIC SUPPLY COMPANY LIMITED, a Company registered under the Indian Companies Act, 1913 (C. Act VII of 1913) and having its Registered Office at No.14, Old Court House Street, Calcutta, (hereinafter called "the Hirer" which expression shall include his successors and assigns) of the Other Part.

(Indian Act VII of 1913)

WHEREBY IT IS AGREED as follows:-

1. The Government of Madras (hereinafter called "The Government") shall let on hire to the Hirer and the Hirer shall take on hire from the Government from the .....day of..... one thousand nine hundred and..... until the Electrical Undertaking of the Hirer is taken over by the Government or until the hiring shall be terminated as hereinafter mentioned, whichever is earlier, the Generating Plant and Equipment detailed in the Schedule hereto (hereinafter referred to as "the said Machinery").

2. The Hirer shall, during the period of hiring punctually pay in advance to the Government at the Office of the Superintending Engineer, Pykara Electricity System, Coimbatore, and without previous demand as half-yearly rent for the hire of the said Machinery, the Sum of Rs.22,000/- (Rupees twenty-two thousand only) or such other amount as may from time to time be decided or agreed upon by or between the parties, the first of such payments to be made on the day of erection of the said Machinery is commenced at the Power Station at Mangalore,

p.t.o.

and the subsequent payments to be made on the corresponding day in each subsequent half year, provided always that in the event of the hiring being determined under any of the provisions in that behalf herein contained the rent or hire payment for the half year then current shall be apportioned to the date of determination. A rebate of fifty per cent of the hire charges shall be allowed for the period from the date of commencement of erection of the said Machinery to the date on which it is put into regular commission (the dates of commencement of erection and of commissioning to be notified by the Hirer to the Government), provided the said Machinery is installed within a reasonable time fixed by the Chief Engineer for Electricity to the Government (hereinafter called "the Chief Engineer"). Notwithstanding the date of commencement of hire charges, the responsibility of the Hirer for the said Machinery shall commence on the date of taking over at the Hirer's Mangalore Power House.

3. The transport and delivery of the said Machinery at the Railway Station nearest to the place where the said Machinery is to be installed will be effected by the Government, and the cost of such transport and delivery will be added to the price of the said Machinery. The unloading at the Railway Station together with the transport to and erection of the Machinery at the site of the Hirer including foundations, structures, etc. at the premises of the Hirer for the installation of the plant shall be done by the Hirer at his cost.

4. The Hirer, with the written consent of the Chief Engineer, shall have the option of purchasing the said Machinery by paying to the Government a sum equivalent

p.t.o.

to its book cost less depreciation or the fair-market value at the time of purchase, whichever is higher, and upon payment of such depreciated cost or market value and of all monies due from the Hirer to the Government under the provisions of this Agreement, the Hirer shall become the absolute owner of the said Machinery, and the hiring shall thereupon terminate.

5. The Hirer may, at any time, terminate the hiring by delivering the said Machinery to the nearest Departmental Store and paying all monies due to the Government under this agreement.

6. The Hirer shall, during the continuance of the hiring, keep the said Machinery in his own custody in his Power House at Mangalore, and shall not sell, offer for sale, assign, transfer, pledge, mortgage, underlet or lend the said Machinery or the Hirer's interest therein or the Hirer's rights under this Agreement or otherwise part with possession of the said Machinery or any part thereof or assume the ownership of the said Machinery or any part thereof or cause or permit the same to be removed from the said Power House.

7. The Hirer shall during the period of hiring allow the Chief Engineer or any person or persons duly authorised by him thereunto at all reasonable hours to enter the said Power House to inspect the condition of the said Machinery.

8. The Hirer shall during the period of hiring punctually pay all rents, rates and taxes, licence fees, duties, charges, impositions and other outgoings due and payable in respect of the said Power House and machinery and will take receipts

p.t.o.

therefor, and will, when demanded in writing, forthwith produce for inspection to the Chief Engineer or other person or persons duly authorised by him the receipts for the ~~then~~ last respective payments due in respect thereof.

9. From the date of taking over the said Machinery at the Mangalore Power House, the Hirer shall, at his own expense, keep the said machinery in good and substantial repair and in working order (reasonable use and fair wear and tear thereof excepted), and shall insure the said machinery against all risks including fire (not caused by wilful or negligent act of the Hirer, his servants or agents), accident, storm, tempest, earthquake or other irresistible force or Act of God, civil commotion, riot or political disturbance (or other unusual cause), and will indemnify the Government against all loss or damage to the said machinery from whatever cause or under whatever circumstances arising, and replace at his own expense any part or parts becoming defective or unserviceable, and no alteration in or addition to the said machinery shall be made without the previous written sanction of the Chief Engineer, provided that the Hirer shall not have or be deemed to have any authority to pledge the credit accruing to the Government for the repair of the said machinery or to create any lien upon the said machinery in respect of such repairs.

10. If, at any time during the period of hiring, the Hirer shall be desirous of executing or creating any mortgage, encumbrance or charge of or upon the premises in or upon which the said machinery shall for the time being be, he shall give to the Chief Engineer one calendar month's previous notice of his intention so to do.

p.t.o.

11. If the Hirer shall make default in the payments mentioned in Clause ~~two~~ 2 of this Agreement (whether the same shall have been demanded or not) or does not observe or perform or shall commit a breach of any of the terms and conditions of this Agreement or if execution or distress is levied upon the said Machinery or any part thereof or upon the Hirer's interest in the said Machinery or if the Hirer shall go into liquidation (except for the purpose of reconstruction or amalgamation) or have a Receiving Order made against ~~him~~ him or enter into any agreement or composition with his creditors or shall execute or create any mortgage, encumbrance or charge upon the said premises (without the consent of the Government which shall not be unreasonably withheld), then in any of the said cases the Chief Engineer may by notice in writing terminate the hiring although the Government or the Chief Engineer may not have taken advantage of a previous default of a like nature.

12. If the hiring is terminated under Clause ~~one or eleven~~ 1 or 11 of this Agreement, the Hirer shall forthwith deliver up the said Machinery at the Hirer's risk and cost to the Government or some person duly authorised thereunto by the Chief Engineer at Mangalore, and in default of such delivery the Chief Engineer or the agents, servants, workmen and others in the employ or on behalf of the Government and all other persons authorised by the Chief Engineer may without previous notice enter the said premises and unfix, seize and remove the said Machinery and resume possession of the same.

13. The Chief Engineer may, at any time or times during the period of hiring, pay any sum or sums which he may deem necessary for the protection of the said machinery or for the purpose of regaining possession of the

p.t.o.

same and thereupon all such payments, together with interest thereon at the rate of six per cent per annum shall forthwith on notice being given to the Hirer become due and payable by the Hirer to the Government.

14. If the hiring is terminated under clause 1 or 11 of this agreement, the Government may, notwithstanding the seizure of the said machinery or the return of the same either by the act of the Hirer or under process of law, recover from the Hirer by action all hire rent in arrears on the date of termination of the hiring and any costs, expenses and payments incurred or made by the Government or the Chief Engineer in connection with obtaining possession of the said machinery or otherwise in relation thereto and all other monies due by the Hirer to the Government under this agreement and also all damages which the Government may sustain in consequence of any breach by the Hirer of any of the terms of this agreement.

15. If the hiring is determined under clause 11 of this agreement and if immediately upon such determination, the Hirer delivers up the said machinery to the Chief Engineer or permits the Chief Engineer to retake possession of the same without molestation or interruption, then the Hirer shall have the right to purchase the said machinery upon such terms as to price and payment as may be agreed upon between the Hirer and the Chief Engineer or to resume the hiring upon terms and conditions similar to those of this agreement and as if no breach of this agreement had been committed by the Hirer, provided the Hirer, within ten days of such determination, deposits with the Chief Engineer the sum of Rs.22,500/- (Rupees twenty two thousand five hundred only), in cash as security for

p.t.o.

the due performance of the terms of a fresh agreement to be entered into between the parties, and provided also that the Hirer shall, within one month of such determination pay to the Government all monies due from the Hirer to the Government under this agreement at the date of such determination and also pay to the Government all costs, charges payments and expenses incurred made or sustained by the Government in or about tracing, seizing, taking and obtaining possession of the said machinery and in or about the removal, carriage warehousing and redelivery of the same. No interest will be paid for the said security deposited by the Hirer.

16. All amounts due to the Government under this agreement shall, if not paid when due, be recovered by the Government as if they were arrears of land revenue, and shall also bear interest at the rate of six per cent per annum from the date on which they so fall due, up to the date of payment or recovery.

17. Any notice required to be given by the Government or the Chief Engineer under this Agreement shall be in writing signed by the Chief Engineer, and may be served on the Hirer at his Registered Office or affixed or left at the said office or sent by registered post addressed to the Hirer at the aforesaid Registered Office, and any notice required to be given by the Hirer under this agreement shall also be in writing and sent by registered post to the Chief Engineer aforesaid.

18. Any dispute or difference arising between the ~~Company~~ Hirer and the ~~Governor~~ Government as to the interpretation of this Agreement or the right of the Government or

p.t.o.

of the ~~Company~~ Hirer respectively to determine the same or any other question, matter or thing arising hereunder hereunder such difference shall be referred to a single Arbitrator who shall be mutually agreed upon by both parties. The Arbitrator's decision thereon shall be final and the provisions of the Indian Arbitration Act of 1940 (CA&T of 1940) or any other statutory modifications thereof for the time being in force shall apply to any such reference.

Upon every or any such reference the costs of and incidental to the reference and the award respectively shall ~~be~~, subject to the condition that the amount of such costs to be awarded to either party shall not in respect of a monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, costs and expenses incurred by either party, be in the discretion of the Arbitrator who may determine the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom, to whom and in what manner the same shall be borne and paid.

The percentages above referred to in this Clause are five per cent on any such monetary award which does not exceed Rs.10,000/- (Rupees Ten Thousand), three per cent on the next Rs.40,000/- (Rupees Forty Thousand) or any part thereof, two per cent on the next Rs.50,000/- (Rupees Fifty Thousand) or any part thereof, and one per cent on any excess over Rs.1,00,000/- (Rupees One Lakh).

IN WITNESS WHEREOF Chief Engineer for Electricity, acting for and on behalf of and by the order and direction of the Governor

p.t.o.

of Madras and..... for and on behalf of the Mangalore Electric Supply Company, Limited, have hereunto set their signatures and the common seal of the Mangalore Electric Supply Company, Limited was hereunto affixed.

SCHEDULE

(Schedule of Generating Set, Switch Board, Controlling Gear, Auxiliaries, Connection Equipments).

Signed, sealed and delivered by the abovenamed, Chief Engineer for Electricity acting for and on behalf of and by the order and direction of the Governor of Madras in the presence of:

1. Witness.

2. Witness

CHIEF ENGINEER FOR ELECTRICITY.

Signed and delivered by the abovenamed acting for and on behalf of the Mangalore Electric Supply Company, Limited, in the presence of:

MANAGING DIREC

1.Witness.

2.Witness.

The Common seal of the Mangalore Electric Supply Company, Limited, was hereunto affixed in the presence of:

1. Witness.

2. Witness.

15.4.1954

Sanction M/25-43 and L

45

ABSTRACT.

ELECTRICITY--Mangalore Company electrical undertaking--Hiring of 500 K.W. diesel set and accessories to Mangalore licensee company--Revised draft agreement--Approved.

PUBLIC WORKS DEPARTMENT.

G.O.Ms.No.2122. Dated the 15th June 1954;
Read the following;

G.O.Ms.No.132.P.W., dated 12.1.1954.
From the Chief Operation Engineer(South)No.1360-E/53-34, dated 6.2.1954.

ORDER:

In modification of the orders in para 1 of G.O.Ms.No.132, Public Works dated 12.1.1954, the Government approve the revised draft agreement, as appended to this order, for being entered into by the Government Electricity Department with the Mangalore Electric Supply Company Limited for the hiring to the Mangalore electric licensee company of the 500 K.W. diesel set and accessories ordered by the Government Electricity Department for the Mangalore electrical undertaking.

(BY ORDER OF THE GOVERNOR OF MADRAS).

T.V.NATESA MUDALIAR,
ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT.

To the Chief Engineer(Operation South).
To the Accountant-General through Finance Department.

::TRUE COPY::FORWARDED::BY ORDER::

S/C

SUPERINTENDENT.

TMJ.15.6.

AN AGREEMENT made this ..... day of ..... one thousand nine hundred and fifty four between THE GOVERNOR OF MADRAS (which expression shall include his successors in office and assigns) of the One Part, and THE MANGALORE ELECTRIC SUPPLY COMPANY LIMITED, a Company registered under the Indian Companies Act 1913(C.AVII of 1913) and having its Registered Office at No.14, Old Court House Street, Calcutta, (hereinafter called "the Hirer" which expression shall include his successors and assigns) of the Other Part.

WHEREBY IT IS AGREED as follows:—

1. The Government of Madras (hereinafter called "The Government") shall let on hire to the Hirer and the Hirer shall ~~shall~~ take on hire from the Government from the ..... day of ..... one thousand nine hundred and ..... until the electrical undertaking of the Hirer is taken over by the Government or until the hiring shall be terminated as hereinafter mentioned, whichever is earlier, the generating plant and equipment detailed in the Schedule hereto(hereinafter referred to as "the said machinery").

2. The Hirer shall, during the period of hiring punctually pay in advance to the Government at the Office of the Superintending Engineer, Pykara Electricity System, Coimbatore, and without previous demand as half-yearly rent for the hire of the said machinery, the sum of Rs.22,000/- (Rupees twenty-two thousand only) or such other amount as may from time to time be decided or agreed upon by or between the parties, the first of such payments to be made on the day the erection of the said machinery is commenced at the Power Station at Mangalore, and the subsequent payments to be ~~made~~ on the corresponding day in each subsequent half year, provided always that in the event of the hiring being determined under any of the provisions in that behalf herein contained the rent or hire payment for the half year then current shall be apportioned to the date of determination. A rebate of fifty per cent of the hire charges shall be allowed for the period from the date of commencement of erection of the said machinery to the date on which it is put into regular commission (the dates of commencement of erection and of commissioning to be notified by the Hirer to the Government), provided the said machinery is installed within a reasonable time fixed by the Chief Engineer for Electricity to the Government (hereinafter called "the Chief Engineer"). Notwithstanding the date of commencement of hire charges, the responsibility of the Hirer for the said machinery shall commence on the date of

taking over at the Hirer's Mangalore Power House.

3. The transport and delivery of the said machinery at the Railway Station nearest to the place where the said machinery is to be installed will be effected by the Government, and the cost of such transport and delivery will be added to the price of the said machinery. The unloading at the Railway Station together with the transport to and erection of the machinery at the site of the Hirer including foundations, structures, etc. at the premises of the Hirer for the installation of the plant shall be done by the Hirer at his cost.

4. The Hirer, with the written consent of the Chief Engineer, shall have the option of purchasing the said machinery by paying to the Government a sum equivalent to its book cost less depreciation or the fairmarket value at the time of purchase, whichever is higher, and upon payment of such depreciated cost or market value and of all monies due from the Hirer to the Government under the provisions of this agreement, the Hirer shall become the absolute owner of the said machinery, and the hiring shall thereupon terminate.

5. The Hirer may, at any time, terminate the hiring by delivering the said machinery to the nearest Departmental Store and paying all monies due to the Government under this agreement.

6. The Hirer shall, during the continuance of the hiring, keep the said machinery in his own custody in his Power House at Mangalore, and shall not sell, offer for sale, assign, transfer, pledge, mortgage, underlet or lend the said machinery or the Hirer's interest therein or the Hirer's rights under this agreement or otherwise part with possession of the said machinery or any part thereof or assume the ownership of the said machinery or any part thereof or cause or permit the same to be removed from the said Power House.

7. The Hirer shall during the period of hiring allow the Chief Engineer or any person or persons duly authorised by him thereunto at all reasonable hours to enter the said Power House to inspect the condition of the said machinery.

8. The Hirer shall during the period of hiring punctually pay all rents, rates and taxes, licence fees, duties, charges, impositions and other outgoings due and payable in respect of the said Power House and machinery

and will take receipts thereof, and will, when demanded in writing, forthwith produce for inspection to the Chief Engineer or other person or persons duly authorised by him the receipts for the last respective payments due in respect thereof.

9. From the date of taking over the said machinery at the Mangalore Power House, the Hirer shall, at his own expense, keep the said machinery in good and substantial repair and in working order(reasonable use and fair wear and tear thereof excepted), and shall insure the said machinery against all risks including fire (not caused by wilful or negligent act of the Hirer, his servants or agents), accident, storm, tempest, earthquake or other irresistible force or Act of God, Civil commotion, riot or political disturbance(or other unusual clause), and will indemnify the Government against all loss or damage to the said machinery from whatever cause or under whatever circumstances arising, and replace at his own expense any part or parts becoming defective or unserviceable, and no alteration in or addition to the said machinery shall be made without the previous written sanction of the Chief Engineer, provided that the Hirer shall not have or be deemed to have any authority to pledge the credit accruing to the Government for the repair of the said machinery or to create any lien upon the said machinery in respect of such repairs.

10. If, at any time during the period of hiring, the Hirer shall be desirous of executing or creating any mortgage, encumbrance or charge of or upon the premises in or upon which the said machinery shall for the time being be, he shall give to the Chief Engineer one calendar month's previous notice of his intention so to do.

11. If the Hirer shall make default in the payments mentioned in clause 2 of this agreement (whether the same shall have been demanded or not) or does not observe or perform or shall commit a breach of any of the terms and conditions of this agreement or if execution or distress is levied upon the said machinery or any part thereof or upon the Hirer's interest in the said machinery or if the Hirer shall go into liquidation (except for the purpose of reconstruction or amalgamation) or have a Receiving Order made against him or enter into any agreement or composition with his creditors or shall execute or create any mortgage, encumbrance or charge upon the said premises (without the consent of the Government which shall not be unreasonably withheld), then in any of

the said cases the Chief Engineer may by notice in writing terminate the hiring although the Government or the Chief Engineer may not have taken advantage of a previous default of a like nature.

12. If the hiring is terminated under clause 1 or 11 of this agreement, the Hirer shall forthwith deliver up the said Machinery at the ~~Mtg~~ Hirer's risk and cost to the Government or some person duly authorised thereunto by the Chief Engineer at Mangalore, and in default of such delivery the Chief Engineer or the agents, servants, workmen and others in the employ or on behalf of the Government and all other persons authorised by the Chief Engineer may without previous notice enter the said premises and unfix, seize and remove the said machinery and resume possession of the same.

13. The Chief Engineer may, at any time or times during the period of hiring, pay any sum or sums which he may deem necessary for the protection of the said machinery or for the purpose of regaining possession of the same and thereupon all such payments, together with interest thereon at the rate of six per cent per annum shall forthwith on notice being given to the Hirer become due and payable by the Hirer to the Government.

14. If the hiring is terminated under clause 1 or 11 of this agreement, the Government may, notwithsanding the seizure of the said machinery or the return of the same either by the act of the Hirer or under process of law, recover from the Hirer by action all hire rent in arrears on the date of termination of the hiring and any costs, expenses and payments incurred or made by the Government or the Chief Engineer in connection with obtaining possession of the said machinery or otherwise in relation thereto and all other monies due by the Hirer to the Government under this agreement and also all damages which the Government may sustain in consequence of any breach by the Hirer of any of the terms of this agreement.

15. If the hiring is determined under clause 11 of this agreement and if immediately upon such determination, the Hirer delivers up the said machinery to the Chief Engineer or permits the Chief Engineer to retake possession of the same without molestation or interruption, then the Hirer shall have the right to purchase the ~~said~~ machinery upon such terms as to price and payment as may be agreed upon between the Hirer and the Chief Engineer or to resume the hiring upon terms and conditions similar to those of this agreement and as if no breach of this agreement had been committed by the Hirer, pro-

vided

the Hirer, within ten days of such determination, deposits with the Chief Engineer the sum of Rs.22,500/-(Rupees twenty two thousand five hundred only), in cash as security for the due performance of the terms of a fresh agreement to be entered into between the parties, and provided also that the Hirer shall, within one month of such determination pay to the Government all monies due from the Hirer to the Government under this agreement at the date of such determination and also pay to the Government all costs, charges payments and expenses incurred made or sustained by the Government in or about tracing, seizing, taking and obtaining possession of the said machinery and in or about the removal, carriage warehousing and redelivery of the same. No interest will be paid for the said security deposited by the Hirer.

16. All amounts due to the Government under this agreement shall, if not paid when due, be recovered by the Government as if they were arrears of land revenue, and shall also bear interest at the rate of six per cent per annum from the date on which they so fall due, up to the date of payment or recovery.

17. Any notice required to be given by the Government or the Chief Engineer under this agreement shall be in writing signed by the Chief Engineer, and may be served on the Hirer at his Registered Office or affixed or left at the said office or sent by registered post addressed to the Hirer at the aforesaid Registered Office, and any notice required to be given by the Hirer under this agreement shall also be in writing and sent by registered post to the Chief Engineer aforesaid.

18. Any dispute or difference arising between the Hirer and the Government as to the interpretation of this agreement or the right of the Government or of the Hirer respectively to determine the same or any other question, matter or thing arising hereunder such ~~/~~ difference shall be referred to a single Arbitrator who shall be mutually agreed upon by both parties. The Arbitrator's decision thereon shall be final and the provisions of the Indian Arbitration Act, ~~1950~~ 1940 (Central Act X of 1940) or any other statutory modifications thereof for the time being in force shall apply to any such reference.

Upon every or any such reference the costs of and incidental to the reference and the award respectively shall, subject to the condition that the amount of such costs to be awarded to either party shall not in respect of a monetary claim exceed the per centage set out below of any such award

irrespective of the actual fees, costs and expenses incurred by either party, be in the discretion of the Arbitrator who may determine the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom and in what manner the same shall be borne and paid.

The percentages ~~have~~ above referred to in this Clause are five per cent on any such monetary award which does not exceed Rs.10,000(Rupees ten thousand), three per cent on the next Rs.40,000(Rupees forty thousand) or any part thereof, two per cent on the next Rs.50,000(Rupees fifty thousand) or any part thereof, and one per cent on any excess over Rs 1,00,000/-(Rupees one lakh).

IN WITNESS WHEREOF Chief Engineer for Electricity, acting for and on behalf of any by the order and direction of the Governor of Madras and ....for and on behalf of the Mangalore Electric Supply Company, Limited, have hereunto set their signatures and the common seal of the Mangalore Electric Supply Company, Limited, was hereunto affixed.

SCHEDULE.

(Schedule of Generating Set, Switch Board). Controlling Gear, Auxiliaries, Connection Equipments).

Signed, sealed and delivered, by the abovenamed Chief Engineer for Electricity acting for and on behalf of and by the order and direction of the Governor of Madras in the presence of:

1. Witness.
2. Witness.

CHIEF ENGINEER FOR ELECTRICITY.

P.T.O.

Signed and delivered by
the abovenamed acting
for and on behalf of the Mangalore
Electric Supply Company, Limited,
in the presence of:

MANAGING DIRECTOR.

1. Witness.

2. Witness.

The Common seal of the Mangalore Electric Supply Company, Limited, was hereunto affixed in the presence of:

1. Witness:

2. Witness:

(TRUE COPY).

TMJ.15.6.

SUPERINTENDENT,
PUBLIC WORKS DEPARTMENT.

P.W.D.(I-2).

SUB: ELECTRICITY - Mangalore Company electrical undertaking - Hiring of 500 K.W. diesel set to Mangalore licensee - Draft agreement - Amendments.

REF: From the C.C.E.(S), No.1360-E/53-30, dated 18.1.54.
From the C.C.E.(S), No.1360-E/53-34, dated 6.2.54.

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Please see the letters from the C.C.E.(S) at p. 1 c.f. and p. 21 c.f.

2. In G.O.Ms.No. 132, Public Works, dated 12.1.1954, the Government approved the draft of an agreement to be entered into by the Government Electricity Department with the Mangalore electric licensee Company for the hiring to the Co. of the 500 K.W. diesel set and accessories ordered by the Government for the Mangalore electrical undertaking. The draft as approved was finalised in consultation with the Law Department with reference to the suggestions made by the C.C.E.(S). A few days after the orders approving the draft agreement had been issued, the C.C.E.(S) forwarded to the Government for approval another copy of draft agreement as finally accepted by the Mangalore licensee and requested the approval of the Government thereto. A copy of this revised agreement is at pp. 3-19 c.f. In his further reference at p. 21 c.f., the C.C.E.(S) has pointed out that most of the clauses of the draft agreement already approved by the Government would not require any modification with reference to the revised draft mentioned at 'S' above, and that clauses 2, 3, 4, 8, 9 and 16 only of the draft agreement already approved by the Government would require some modifications. He has stated that the modifications embodied in the revised draft as finally accepted by the licensee are in order and has requested that the revised draft at pp.3-19 c.f. may be approved by the Government

p.t.o.

3. The proposal of the C.E.(E) at 'A' overleaf ~~above~~ has been examined in the sectional notes below. So far as the financial implications are concerned, one of the two main alterations now proposed is that in lieu of the hire charge of Rs.22,200/- p.a. or such sum as may be mutually agreed upon by the Govt. and the licensee, ~~in the modified draft~~ provided for in the draft agreement already approved, it is now proposed under the modified draft, to restrict the hire charges to Rs. ~~20,000/-~~ 22,000 p.a. or such sum as may be agreed upon mutually by the Government and the licensee. This does not seem to involve a substantial deviation and is proposed to be agreed to in this Department. The other deviation is that, whereas the agreement already approved, provided for the payment of interest by the Govt. on the security deposit of Rs.22,500/- proposed to be obtained from the licensee, in the modified draft now proposed, it is proposed to ~~leave out~~ omit any reference to payment of interest as the licensee has not raised this issue. Such non-payment of interest will not be to the disadvantage of the Government.

4. After orders have been passed on the sectional notes, the file may be sent to Law (Scrutiny) for remarks, if any, with a clean copy of the revised draft agreement as finalised with reference to the sectional notes. This may also be.

8.4.53.

14 APR 1954
205
ASSISTANT SECRETARY
LAW DEPARTMENT, MADRAS

PWO.5722/54-1
15.4.54

LAW DEPARTMENT.

The slight alterations indicated in red ink on the draft agreement at (N) 427-434 may be made.

No other remarks are called for.

Law Dept.
VON-0 6205/54-1
18/5/54.

17.5.54.

17.5.54

Fin.

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT
18 MAY 1954
FINANCE DEPARTMENT
4730

46183

Fin (Asst B)

Please see the notes from Labour. The remarks of this Deptt have been added on pp 7(a), 11, 16, 19, 29(a) and 29 of the technical notes below. After orders are passed thereon, the file may be returned to Pub, (No remarks are called for in the Fin clause

29.5.54

Fin. U.O. 47309 EB/54-1
8.6.54.

ASST. SECRETARY TO GOVERNMENT
8 JUN 1954
PUBLIC WORKS DEPARTMENT

8/6/54 P.W.

PWD(2)

Please see the notes of the Law and Finance Depts. The Finance Dept has accepted the proposals of this Deptt. The slight alterations suggested by the Law Deptt. to the draft agreement at (N) are not material and they may be accepted. The revised draft at (N) as slightly altered by Law Deptt, may be approved. The draft order below is for approval (No circulation of the case is necessary)

11.6.54 11/6/54 12/6/54

14.6.54

C/Asst as above 2122 PW 15.6.54

Preamble and Clause 1 of Draft agreement already approved by Govt.

AN AGREEMENT made the day of One thousand nine hundred and fifty-three between the GOVERNOR OF MADRAS (which expression shall include his successors in office and assigns) of the one Part and THE MANGALORE ELECTRIC SUPPLY COMPANY, LIMITED, a company registered under the Indian Companies Act, 1913, and having its Registered Office at No.14, Old Court House Street, Calcutta (Hereinafter called 'the Hirer' which expression shall include its successors and assigns) of the Other Part.

WHEREBY IT IS AGREED AS FOLLOWS:-

1. The Government of Madras (Hereinafter called "the Government") shall let on hire to the Hirer and the Hirer shall take on hire from the Government from the day of one thousand nine hundred and fifty-three until the electrical undertaking of the Hirer is taken over by the Government or until the hiring shall be terminated as hereinafter mentioned, whichever is earlier, the generating plant and equipment detailed in the Schedule hereto (hereinafter referred to as "the said machinery").

Revised DRAFT RECOMMENDED at the instance of the Co by CHIEF OPERATION ENGINEER(SOUTH)

AN AGREEMENT made this.....day of .....One thousand nine hundred and .....Between THE GOVERNOR OF MADRAS (which expression shall include his successors and assigns) of the One Part; And THE MANGALORE ELECTRIC SUPPLY COMPANY LIMITED, a Company registered under the Indian Companies Act and having its Registered Office at No.14, Old Court House Street, Calcutta, (hereinafter called "the Hirer" which expression shall include its successors and assigns) of the Other Part.

p.t.o.

WHEREBY IT IS AGREED as follows:-

1. The Government of Madras (hereinafter called 'The Government') shall let on hire to the Hirer and the Hirer shall take on hire from the Government from the.....day of..... ..... one thousand nine hundred and..... .....until the Electrical Undertaking of the Hirer is taken over by the Government or until the hiring shall be terminated as hereinafter mentioned, whichever is earlier, the Generating Plant and Equipment detailed in the Schedule hereto (hereinafter referred to as "the said Machinery").

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

Preamble and Clause 1 of the draft agreement approved by Government.

Preamble: No change. The preamble as in the draft agreement already approved by the Government may stand.

Clause 1: No change. Clause 1 of the draft agreement already approved by the Government may stand.

4.4.54.

Clause 2 of Draft agreement approved by Govt / as in type).

2. The Hirer shall during the period of hire punctually pay in advance to the Government at the office of the Superintending Engineer, Pykara Electricity System, Coimbatore and without previous demand, as half yearly rent for the hire of the said machinery the sum of Rs.22,200/- (Rupees twenty two thousand and two hundred only) or such other amount as may, from time to time, be decided or agreed upon by or between the parties, the first of such payments to be made on the date of commencement of the handing over of the said machinery at the Power House at Mangalore and the subsequent payments to be made within three days after the expiry of each subsequent period of six months thereafter. A rebate of 50% of the hire charges will be allowed for the period from the date of commencement of handing over of the said machinery to the date on which it is put to use, provided the said machinery is installed within such reasonable time, not exceeding three months from the date of commencement of the handing over of the machinery as may be fixed by the Chief Engineer for Electricity to the Government (hereinafter called " the Chief Engineer").

Provided always that in the event of the hiring being terminated under any of the provisions in that behalf herein contained, the rent or hire-payments for the half year then current shall be apportioned up to the date of termination.

Notwithstanding the date of commencement of hire charges, the responsibility of the hirer for the safety of the said machinery shall commence from the date of taking delivery at the Mangalore Railway Station. Power

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

2. The Hirer shall during the hiring punctually pay to the Government at the Office of the Superintending Engineer, Pykara Electricity System, Coimbatore, and without previous demand as half-yearly rent for the hire of the said Machinery, the Sum of Rs.22,000/- (Rupees twenty-two thousand only) or such other amount as may from time to time be decided or agreed upon by or between the parties, the first of such payments to be made on the day, erection of the said Machinery is commenced at the Power Station at Mangalore, and the subsequent payments to be made on the corresponding day in each subsequent half year. Provided always that in the event of the hiring being determined under any of the provisions in that behalf herein contained, the rent or hire payment for the half year then current shall be apportioned to the date of determination. A rebate of fifty per cent of the hire charges shall be allowed for the period from the date of commencement of erection of the said Machinery to the date on which it is put into regular commission (the dates of commencement of erection and of commissioning to be notified by the Hirer to the Government), provided the said Machinery is installed within a reasonable time fixed by the Chief Engineer for Electricity to the Government (hereinafter called "the Chief Engineer"). Notwithstanding the date of commencement of hire charges the responsibility of the Hirer for the said Machinery shall commence on the date of taking over at the Hirer's Mangalore Power House.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

Clause 2 of the approved draft Agreement:

The question as to the date from which the hire charges should be paid by the licensee (the hirer) to the Government Electricity Department was examined. As the plant and equipment were likely to be received on different dates and as the Department had to check them at the Power House and since for purposes of levy of hire charges, the date of delivery at the Power House would be convenient, the C.O.E.(S) previously recommended that the latter date, viz., the date of delivery at the Power House, might be adopted for purposes of recovery of hire charges although the standard practice was to recover the charges from the date of delivery of the set at the nearest Railway Station. He further stated that it had been decided that the plant etc. would be deemed to have been handed over to the licensee at the Power House at Mangalore with effect from the date on which the handing over commenced and that 50% of the hire charges would be payable from that date upto the date on which the plant etc. were put to use, the first of such payments of the hire charges being made on the date of commencement of handing over of the machinery at the power house. It was further proposed by this Department that the payments of the hire charges might be made within 3 days after the expiry of each subsequent period of six months after the date of first payment thereafter and that the machinery should be installed within a reasonable time as may be fixed by the CE(E), not exceeding 3 months from the date of commencement of the handing over of the machinery. ~~as may be~~

p.t.o.

~~fixed~~. The above proposals of the C.U.E.(S) and this Department were accepted and provision was accordingly included in clause 2 of the draft agreement approved by the Government.

2. The C.U.E.(S) has now reported that during the discussion with the Resident Engineer of the licensee company on 8.10.1953, it has been agreed that hire charges for the set may be levied from the date of commencement of erection (of the machinery at the Power House) and not from the date of handing over as provided for in the draft already approved. This may be agreed to. The alterations to be made in clause 2 of the approved draft agreement consequent on the above modification suggested by the C.U.E.(S) are indicated in pencil in clause 2 of the approved draft agreement extracted ~~above~~ on page 3 ante. It will be seen that the revised annual hire charges now recommended by the C.U.E.(S) is Rs.22,000/- as against Rs.22,20(provided for in the approved draft. As the amount will, however, be subject to variation in view of the provisions referred to at 'L' on p. 3 ante, there seems to be no objection to the amount now recommended by the C.U.E. being accepted. It is, however, observed that the revised clause accepted by the licensee does not provide for C. on p. 5 ante, which, being important, it would seem desirable to retain. If D and E above are approved, then Clause 2 of the draft agreement already approved by the Government may be revised as follows:-

"2. The Hirer shall during the period of hiring punctually pay in advance to the Government at the office of the Superintending Engineer, Pykara Electricity System, Coimbatore, and without previous demand, as half yearly rent for the hire of the said machinery the sum of Rs. ~~20,000~~ 22,000/- (Rupees twenty two thousand only) or such other amount as

p.t.o.

may, from time to time, be decided or agreed upon by or between the parties, the first of such payments to be made on the day, erection of the said machinery is commenced at the Power House of the Hirer at Mangalore and the subsequent payments to be made within three days after the expiry of each subsequent period of six months thereafter, provided always that in the event of the hiring being terminated under any of the provisions in that behalf herein contained, the rent or hire-payments for the half year then current shall be apportioned up to the date of termination. A rebate of fifty per cent of the hire charges will be allowed for the period from the date of commencement of erection of the said machinery to the date on which it is put into regular commission (the dates of commencement of erection and of commissioning to be notified by the Hirer to the Chief Engineer for Electricity to the Government), provided the said machinery is installed within a reasonable time, [not exceeding three months from the date of commencement of the handing over of the machinery as may be] fixed by the Chief Engineer for Electricity to the Government (hereinafter called the Chief Engineer).

Notwithstanding the date of commencement of hire charges, the responsibility of the hirer for the safety of the said machinery shall commence from the date of ~~its receipt at the Mangalore Railway Station~~ taking over at the Hirer's Power House at Mangalore".

19
t.4.54./57 u/sm

3454

In view of 'H' above, 'N' seems unnecessary.
2. 'K' at p(4 to 10) to adjust as per reference to 'P' above seems unnecessary. P.T.O.

10

I would like urgent attention this draft at p/4 and
avoid any further waste of effort, time and
stationery.

9/9/54

Mrs Ackroyd

Miriam may agree that the revised
draft response from to G(S) on p 4 above
may be accepted.

29.5.54

8/6/54

Clause 3 of the Draft Agreement as approved by Govt. (as in type).

3. The transport and delivery of the said machinery at the Railway Station nearest to the place where the said machinery is to be installed shall be effected by the Government, and the cost of such transport and delivery shall be added to the price of the said machinery. The unloading at the said Railway Station together with the transport to and erection of the said machinery at the site of the Hirer, including all foundations and structures whatsoever that may be necessary for the installation of the said machinery at the premises of the Hirer, shall be done by the Hirer at his cost.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

3. The transport and delivery of the said Machinery at the Railway Station nearest the place where the said Machinery is to be installed will be effected by the Government, and the cost of such transport and delivery will be added to the price of the said Machinery. The unloading at the Railway Station together with the transport to and erection of the Machinery at the site of the Hirer including foundations, structures, etc. at the premises of the Hirer for the installation of the plant shall be done by the Hirer at his cost.

REMARKS OF PUBLIC WORKS DEPARTMENT (1-2).

~~Clause 3 of the draft Agreement approved by the Government.~~

The alterations to be made to clause 3 of the draft agreement approved by the Govt., with reference to clause 3 of the revised draft accepted by the licensee (& recommended by C.O.E.(S)), are indicated in pencil in clause 3 of the approved draft extracted at X above. It is stated by the

p.t.o.

C.C.E.(S) that the Department insisted on the retention of the existing provision in the draft agreement (approved by the Government) according to which the transport and erection charges of the machinery will have to be borne by the licensee. Since no material changes are proposed with reference to this clause, it seems that clause 3 of the draft already approved may stand.

10/4.54 Shukla 7.4.54

Let us accept the revised draft. There is no point in arguing and frustrating matters.

9/4/54

Clause 4 of Draft Agreement already approved & Govt. (as in Life)

4. The Hirer, with the written consent of the Chief Engineer, but not otherwise, shall have the option of purchasing the said machinery by paying to the Government a sum of Rupees three lakhs seventy thousand only or any other sum which may be specified by the Chief Engineer and upon payment of the said sum and of all moneys due from the Hirer to the Government under the provisions of this agreement, shall become the absolute owner of the said machinery and the hiring shall thereupon terminate.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

4. The Hirer with the written consent of the Chief Engineer, shall have the option of purchasing the said Machinery by paying to Government a sum equivalent to its book cost less depreciation or the fair-market value at the time of purchase, whichever is higher, and upon payment of the depreciated cost or market value and of all monies due from the Hirer to the Government under the provisions of this Agreement the Hirer shall become the absolute owner of the said Machinery, and the hiring shall thereupon terminate.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

Clause 4 of the draft agreement already approved by the Government provides, among other things, that the licensee company shall have the option of purchasing the machinery during the period of hiring by paying to the Government a sum of Rs.3,70,000/- or any other sum which may be specified by the C.E.(E). The sum of Rs.3,70,000/- represents the cost of the machinery inclusive of the cost of

p.t.o.

transport. The C.C.E.(S) has now pointed out that during the discussion with the Licensee's engineer on 8.10.1953, it was agreed that the draft clause should be amended to provide for payment by the licensee of the "book cost of the set less depreciation" or the market value thereof at the time of purchase, whichever is higher, in the event of the licensee exercising the option to purchase the set at anytime during the period of hiring. The proposal at A above appears to be reasonable and may be accepted. If so, clause 4 of the draft agreement already approved may be recast as follows:-

"4. The Hirer, with the written consent of the Chief Engineer, but not otherwise, shall have the option of purchasing the said machinery by paying to the Government a sum equivalent to its book cost less depreciation or its fair market value at the time of purchase, whichever is higher, and upon payment of the said depreciated cost or fair market value, as the case may be, and of all monies due from the Hirer to the Government under the provisions of this agreement, the Hirer shall become the absolute owner of the said machinery and the hiring shall thereupon terminate".

3.4.54 5/4/54 7/4/54

We may accept the C.O.E's recommended draft. It save arguments

9/4/54

Finance (Expd)

Finance may agree that revised draft of CO E(S) may be accepted.

29.5.54

8/6/54

P.T.O.

Clause 5 of Draft Agreement approved by Govt. (as in Ryk)

5. The Hirer may at any time terminate the hiring by delivering the said machinery in sound condition to the nearest store of the Government Electricity Department and paying all the monies due to the Government under this agreement.

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER(SOUTH).

5. The Hirer may at any time terminate the hiring by delivering the said Machinery to the nearest Departmental Store and paying all monies due to the Government under this agreement.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 5 of the draft agreement approved by~~ Government.

The alterations to be made to clause 5 of the draft agreement approved by the Government, with reference to the revised draft now accepted by the licensee and recommended by the C.O.E.(S), are not material. Clause 5 as already approved by the Government, which provides for the return of the machine in sound condition may stand.

4.4.54 5/4/54

Same as at p 11 ante

9/6/54

Clause 6 of Draft Agreement approved by Govt (as in type) 21/12/53

6. The Hirer shall, during the continuance of the hiring, keep the said machinery in his own custody in his Power House at Mangalore, and shall not sell, offer for sale, assign, transfer, pledge, mortgage, underlet, or lend the said machinery or the Hirer's interest or rights under this agreement or otherwise part with possession of the said machinery or any part thereof or assume the ownership of the said machinery or any part thereof or cause or permit the same to be removed from the said Power House.

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

6. The Hirer shall during the continuance of the hiring keep the said Machinery in its own custody in its Power House at Mangalore, and shall not sell, offer for sale, assign, transfer, pledge, mortgage, underlet or lend the said Machinery or the Hirer's interest therein or the Hirer's rights under this Agreement or otherwise part with possession of the said Machinery or any part thereof or assume the ownership of the said Machinery or any part thereof or cause or permit the same to be removed from the said Power House.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 6 of the draft agreement approved by Government~~.

The alteration to be made to clause 6 of the draft agreement approved by the Government, with reference to the revised draft now accepted by the licensee and recommended by the C.O.E.(S), is not material. Clause 6 already approved by the Govt. may stand.

4.4.54 5/4/54

Let us await the C.O.E. recommendation
9/4/54

Clause 7 of Draft Agreement approved by Govt. (as in 1954)

7. The Hirer shall during the period of hiring allow the Chief Engineer or any person or persons duly authorised by him thereunto at all reasonable hours to enter the said Power House to inspect the condition of the said machinery.

D.I.O.

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH

7. The Hirer shall during the hiring allow the Chief Engineer or any persons or persons duly authorised by him thereunto at all reasonable hours to enter the said Power House to inspect the condition of the said Machinery.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 7 of the draft agreement approved by Govern~~

The alteration to be made to clause 7 of the draft agreement approved by the Government, with reference to the revised draft now accepted by the licensee and recommended by the C.O.E.(S), is not material. Clause 7 as already approved by the Government may stand.

4.4.54

5/4/54

Clause 8 of Draft Agreement
approved by Govt. (as in type)

8. The Hirer shall during the period of hiring punctually pay all rents, rates and taxes, licence fees, duties, charges, impositions and other outgoings due and payable in respect of the said Power House and machinery and will take receipts therefor, and will, when demanded in writing, forthwith produce for inspection to the Chief Engineer or other person or persons duly authorised by him the receipts for the last respective payments due in respect thereof. [The Hirer will also, during the period of hiring, allow the Engineer of the suppliers of the machinery to inspect the machinery once in six months and the cost of such inspection shall be borne by the Hirer.]

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH)

8. The Hirer shall during the hiring punctually pay all rents, rates and taxes, licence fees, duties, charges, impositions and other outgoings due and payable in respect of the said Power House and Machinery, and will take Receipts therefor, and will when demanded in writing forthwith produce for inspection to the Chief Engineer or other person or persons duly authorised by him the Receipts for the then last respective payments due in respect thereof.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 8 of the approved draft agreement:~~

Please see the concluding sentence in clause 8 of the draft agreement approved by the Govt. which stipulates that the licensee shall, during the period of hiring, permit the suppliers of the machinery to inspect the machinery once in six months, the cost of such

p.t.o.

inspection being borne by the Hirer. The licensee is stated to have contended that under the terms of the agreement, he is required to maintain the machinery in good condition and that in view of this responsibility devolving on him, there is no need for him to bear the cost of inspection of the Suppliers' Engineer. The C.C.E.(S) has accepted the contention of the licensee. It is observed that in the revised draft now accepted by the licensee, ~~it is observed that~~ the concluding sentence occurring in clause 8 of the agreement approved by the Govt. mentioned at 2 overleaf has been omitted. In view of 4 above, the omission may be agreed to.

4.4.54 6/4/54 8/4/54

27

Fin Sec to Govt

Finance may agree that the revised draft of the CCE(S) in this case may be accepted.

29.5.54 8/6/54.

Clause 9 of Draft Agreement 27
approved by Govt. (as in the)
from the date of taking over at the Mangalore power H.O.

9. The Hirer shall during the [hiring] at his own expense keep the said [illegible] good and substantial repair and in working order [except] reasonable use and fair wear and tear thereof [damage by] fire (not caused by wilful or negli[gent] act of the Hirer, his servants or Agents) [accid]ent, storm, tempest, earthquake or other inevitable force or act of God, civil commotion riot or political dis[turbance] (or any other unusual cause) over which the [hirer] has no control excepted, and will indemnify the Government against all loss or damage to the said machinery from whatever cause and under whatever circumstance arising (except as aforesaid) (unless the damage is fully covered by insurance payable to the Government) and replace at his own expense any part or parts becoming defective or unserviceable, and no alteration in or addition to the said machinery shall be made without the previous written sanction of the Chief Engineer, provided that the Hirer shall not have or be deemed to have any authority to pledge the credit [accruing] to the Government for the repair of the said [machinery] or to create any lien upon the said machinery in respect of such repairs.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

9. From the date of taking over at the Mangalore Power House, the Hirer at his own expense shall keep the said Machinery in good and substantial repair and in working order (reasonable use and fair wear and tear thereof excepted), and shall insure the said Machinery against all risks including fire (not caused by wilful or negligent act of the Hirer, his servants or agents), accident, storm, tempest,

p.t.o.

earthquake or other irresistible force or Act of God, civil commotion, riot or political disturbance (or other unusual cause), and will indemnify the Government against all loss or damage to the said Machinery from whatever cause or under whatever circumstances arising, and replace at his own expense any part or parts becoming defective or unserviceable, and no alteration in or addition to the said Machinery shall be made without the previous written sanction of the Chief Engineer, provided that the Hirer shall not have or be deemed to have any authority to peldge the credit of the Government for the repair of the said Machinery or to create any lien upon the said Machinery in respect of such repairs.

REMARKS OF CHIEF OPERATION ENGINEER (SOUTH).

The idea behind the clauses 9 and 16 approved inG.O.Ms.No. 132, dated 20.1.1954 is that the responsibility for the safety of the set during the hire period will vest with the licensee and he should necessarily insure it for the entire hire period. The latest revision of the clause 9, sent by me in letter No. 1360-E/53-30/18.1.54 appears to achieve the above purposes. I, therefore, submit that the clause as suggested by the company now may be retained instead of the original clauses 9 and 16.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 9 of the draft agreement approved by the Govt.~~

Please see the remarks of the C.O.E.(S) extracted at X above. In the circumstances stated therein, it seems that clause 9 of the draft agreement already approved by the Government may be

p.t.o.

E on ff 27-28 ante 29

substituted by the revised Clause 9 now accepted by the licensee and recommended by the C.C.E.(S). since the change will not be disadvantageous to the Government. The slight alterations indicated in pencil in the revised draft at E on ff 27-28 ante are approved.

4.4.54

5/4/54

8/4/54

Hb 8/4/54

Fin (SK fp 8)

Finance may agree that the revised draft of the CCE(S), as amended in pencil at E on ff 17-18 above, may be settled.

29.5.54

8/6/54

Clause 10 of Draft Agreement approved by Govt (as in Ex)

10. If, at any time during the period the Hirer shall be desirous of executing or creating any mortgage, encumbrance or charge of or upon the premises in or upon which the said machinery shall for the time being be, he shall give to the Chief Engineer one calendar month's previous notice of his intention so to do.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

10. If the Hirer at any time during the hiring shall be desirous of executing or creating any mortgage, encumbrance or charge of or upon the premises in or upon which the said Machinery shall for the time being be, it shall give the Chief Engineer one calendar month's previous notice of its intention so to do.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 10 of the draft agreement approved by the Govt.~~

Alterations to be made to the draft clause 10 R alone of the draft agreement already approved by the Govt. with reference to the draft agreement now accepted S alone by the licensee and recommended by the C.O.E.(S) are indicated in pencil in the approved clause R alone. It is observed that the alterations to be made are not material. In view of this, the draft clause 10 R alone already approved by the Govt. may stand without any modification ~~as indicated in pencil~~.

4.4.54

5/4/54

5/4/54

Clause 11 of Draft Agreement approved by Govt (as in type) 33

11. If the Hirer shall make default in paying the hire rent mentioned in clause 2 of this Agreement (whether the same shall have been demanded or not), or does not observe or perform or shall commit a breach of any of the other terms and conditions of this agreement or if execution or distress is levied upon the said machinery or any part thereof or upon the Hirer's interest in the said machinery, or if the Hirer shall go into liquidation (except for the purpose of reconstruction or amalgamation) or have a Receiving Order made against him or enter into any agreement or composition with his creditors or shall execute or create any mortgage, encumbrance or charge upon the said premises (without the consent of the Chief Engineer which shall not be unreasonably withheld), then and in any of the said cases, the Chief Engineer may by notice in writing terminate the hiring although the Government or the Chief Engineer may not have taken advantage of a previous default of a like nature.

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH)

11. If the Hirer shall make default in the payments mentioned in Clause two of this Agreement (whether the same shall have been demanded or not) or does not observe or perform or shall commit a breach of any of the terms and conditions of this Agreement or if execution or distress is levied upon the said Machinery or any part thereof or upon the Hirer's interest in the said Machinery or if the Hirer shall go into liquidation (except for the purpose of reconstruction or amalgamation) or have a Receiving Order made against it or enter into any agreement or composition with its

p.t.o.

creditors or shall execute or create any mortgage, encumbrance or charge upon the said premises (without the consent of Government which shall not be unreasonably withheld), then in any of the said cases the Chief Engineer may by notice in writing terminate the hiring although the Government or the Chief Engineer may not have taken advantage of a previous default of a like nature.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 11 of the draft agreement approved by the Govt.~~

Alterations to be made to the draft clause 11 of the draft agreement already approved by the Govt., with reference to the draft agreement now accepted by the licensee and recommended by the C.C.E.(S), are indicated in pencil in the approved clause. It is observed that the alterations to be made are not material. In view of this, the draft clause 11 already approved by the Government may stand without any modification.

4.4.54 5/4/54

We may accept the C.C.E. Draft

9/4/54

Clause 12 of Draft Agreement approved by Govt. (as in the)

12. If the hiring is terminated under [illegible] or 11 of this agreement, the Hirer shall forthwith deliver up the said machinery at [illegible] risk and cost to the Government or some person duly authorised thereunto by the Chief Engineer at Mangalore and in default of such delivery, the Chief Engineer or the agents, servants, workmen, and others in the employ or on behalf of the Government and all other persons authorised by the Chief Engineer may, without previous notice, enter the said premises and unfix, seize and remove the said machinery and resume possession of the same.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

12. If the hiring is terminated under Clause one or eleven of this Agreement, the Hirer shall forthwith deliver up the said Machinery at the Hirer's risk and cost to the Government or some person duly authorised thereunto by the Chief Engineer at Mangalore, and in default of such delivery the Chief Engineer or the agents, servants, workmen and others in the employ or on behalf of the Government and all other persons authorised by the Chief Engineer may without previous notice enter the said premises and unfix, seize and remove the said Machinery and resume possession of the same.

REMARKS OF PUBLIC WORKS DEPARTMENT (1-2).

~~Clause 12 of the draft agreement approved by the Govt.~~

The alterations to be made to the draft clause 12 of the draft agreement already approved by the Government, with reference to clause 12 of the draft agreement now accepted by the licensee and recommended by the C.O.E.(S), are indicated,

p.t.o.

in pencil in the approved clause. It is observed that the alterations to be made are not material. In view of this, the draft clause 12 already approved by the Govt. may stand without any modification.

Clause 13 of Draft Agreement approved by GOM.

13. The Chief Engineer may, at either before or after the termination of the hiring, during the hiring, pay any sum or sums which the Chief Engineer may deem it advisable to pay for the protection of the said machinery or for the purpose of regaining possession of the same and thereupon all such payments, together with interest thereon at the rate of six per cent per annum from the date of such payment, shall forthwith on notice being given to the Hirer become due and payable by the Hirer to the Government.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

13. The Chief Engineer may at any time or times during the hiring pay any sum or sums which may be necessary for the protection of the said Machinery or for the purpose of regaining possession of the same, and thereupon all such payments together with interest thereon at the rate of six per cent per annum shall forthwith on notice being given to the Hirer become due and payable by the Hirer to the Government.

REMARKS OF PUBLIC WORKS DEPARTMENT (1-2).

~~Clause 13:~~ The slight amendments suggested by the C.O.E.(S) to this clause may be accepted subject to the slight modification indicated ~~thereon~~ in the C.O.E.'s draft above.

4.4.54 5/4/54 8/4/54

9/4/54

Clause 14 of Draft Agreement approved by Govt (as in type)

14. [redacted]

calnse 1 or 11 of this agreement, the Government may notwithstanding the seizure of the said machinery or the return of the same either by the act of the Hirer or under process of law, recover from the Hirer by action all hire rent in arrears on the date of termination of the hiring and any costs, expenses and payments incurred or made by the Government or the Chief Engineer in connection with obtaining possession of the said machinery or otherwise in relation thereto and all other monies due by the Hirer to the Government under this agreement and also all damages which the Government may sustain in consequence of any breach by the Hirer of any of the terms of this agreement.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

14. If the hiring is terminated under Clause one or eleven of this Agreement, the Government may notwithstanding the seizure of the said Machinery or the return of the same either by the act of the Hirer or under process of law recover from the Hirer by action all hire rent in arrear on the date of termination of the hiring and any costs, expenses and payments incurred or made by Government or the Chief Engineer in connection with the obtaining possession of the said Machinery or otherwise in relation thereto and all other mondes due by the Hirer to the Government under this Agreement and also all damages which the Government may sustain in consequence of any breach by the Hirer of the terms of ~~this~~ This Agreement

Remarks of PWD(Sz)

No material alterations have been suggested. Draft clause 14 already approved may stand.

4.4.57 5/4/57 9/4/57 (STO 12/4/57)

Clause 15 of Draft Agreement approved by Govt. (as in Typ)

15. If the hiring is determined under clause 11 of this agreement and if immediately upon such determination, the Hirer delivers up the said machinery to the Chief Engineer or permits the Chief Engineer to take possession of the same without molestation or interruption, then the Hirer shall have the right to purchase the said machinery upon such terms as to price and payment as may be agreed upon between the Hirer and the Chief Engineer or to resume the hiring upon terms and conditions similar to those of this agreement and as if no breach of this agreement had been committed by the Hirer, provided that the Hirer, within ten days of such determination, deposits with the Chief Engineer the sum of Rupees twenty two thousand five hundred only, in cash as security for the due performance of the terms of a fresh agreement to be entered into between the parties, and provided also that the Hirer shall, within one month of such determination pay to the Government all monies due from the Hirer to the Government under this agreement at the date of such determination and also pay to the Government all costs, charges made or sustained by the Government in or about tracing, payments and expenses incurred, seizing, taking and obtaining possession of the said machinery and in or about the removal, carriage, warehousing and redelivery of the same. Interest will be paid for the said security deposited by the Hirer at three per cent per annum.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

15. If the hiring is determined under Clause eleven of this Agreement and if immediately upon such determination the Hirer delivers up the said Machinery to the

p.t.o.

Chief Engineer or permits the Chief Engineer to retake possession of the same without molestation or interruption, then the Hirer shall have the right to pruchase the said Machinery upon such terms as to price and payment as may be agreed upon between the Hirer and the Chief Engineer, or to resume the hiring upon terms and conditions similar to those of this Agreement and as if no breach of this Agreement had been committed by the Hirer, Provided the Hirer within ten days of such determination deposits with the Chief Engineer the sum of Rs.22,500/- (Rupees twenty-two thousand five hundred only) in cash as security for the due performance of the terms of the fresh Agreement to be entered into between the parties, Provided also that the Hirer shall within one month of such determination pay to the Government all monies due from the Hirer to the Government under this Agreement at the date of such determination and also pay to Government all costs, charges, payments and expenses incurred, made or sustained by the Government in or about tracing, seizing, taking and obtaining possession of the said Machinery and in or about the removal, carriage, warehousing and redelivery of the same. No interest will be paid for the said security deposited by the Hirer.

(P.T.O.)

4329

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

Clause 15 of the draft agreement already approved by the Government:

In clause 15 of the draft agreement already approved by the Government, provision has been made that in the event of the agreement being terminated for a breach of the terms of the contract and in the event of the resumption of the hiring thereafter, the licensee should deposit with the Government Electricity Department a sum of Rs.22,500/- as security for due performance of the terms of the fresh agreement. The C.C.E.(S) then reported that the Company felt that interest should be paid by the Government on this security amount. This was approved by the Government and it was specified in the last sentence of clause 15 that interest at 3% was payable to the licensee on the security deposit. But in clause 15 of the revised agreement accepted by the licensee, no provision as at M above has been included. In his report at p. 21 c.f., the C.C.E.(S) has not stated whether the provision at M above should be deleted in the agreement. It does not seem necessary to consult the C.C.E.(S) on the point and the draft clause as already approved may be modified as now suggested by the C.C.E.(S) leaving out the provision in regard to payment of interest on the security deposit. The question of payment of interest may be gone into separately if the licensee raises the issue later on. ~~In other respects~~ The other slight amendments in draft clause 15 on p 27 ante already approved, as indicated ~~no further alterations~~ in pencil with reference to the new draft now suggested by the CCE (S), may also be accepted.

18
4.4.54

9/4/54

Finance may agree that this (Step B) the revised draft of the CO (B), according to which no interest will be paid on the sum duly deposited by the hirer, may be accepted.

29.5.54

8/6/54

45. 30

Clause 16 of Draft Agreement approved by Govt.

[redacted] be at liberty to insure for the benefit of the Government the said machinery against loss or damage by fire or accident for any sum not exceeding the sum of Rupees three lakhs. The Hirer shall pay to the Chief Engineer on demand all sums [redacted] which may be paid by him for effecting or keeping on foot such insurance.

Revised draft proposed by CE(S)

Nil.

Remarks of the PWD (I$_2$)

Please see the remarks of the CE(S) extracted at X on p 18 ante. In view of the fact that the licensee under draft clause 9, Co. (Hirer) will have to take the responsibility for the safety of the set during the hire period & insuring the set against risk etc, clause 16 of the draft agreement already approved by the Govt. which provides for such insurance being effected by the CE(S), may be omitted as proposed by the CE(S).

4/4/54 5/4/54

Mr. [illegible]

Hb 9/4/54.

Finance may agree that clause 16 above may be omitted.

29.5.54

8/6/54

Secd of Finance

Clause 17 of Draft Agreement approved by Govt. 47 35

16 (17) All amounts due to the Govt. [illegible] this agreement shall, if not paid when due, be recovered by the Government as if they were arrears of land revenue, and shall also bear interest at the rate of six per cent per annum from the date on which they fall due, up to the date of payment or recovery.

Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH).

16. All amounts due to the Government under this agreement shall, if not paid when due, be recovered by the Government as if they were arrears of revenue, and shall also bear interest at the rate of six per cent per annum from the date on which they so fall due, up to the date of payment or recovery.

REMARKS OF PUBLIC WORKS DEPARTMENT (1-2).

~~Clause 17 of the draft agreement approved by Govt.~~ ~~The alterations to be carried out to this clause with reference to the revised draft now accepted by the licensee are not material.~~ No change. Hence, the clause already approved by the Government may stand. Since 16 of the draft agreement approved by the Government is to be deleted, clause 17 of the draft already approved will have to be renumbered as clause 16.

45

N.V. 4.4.54

7/5/54

AW/AMS

AD 9/4/54

JIC p 32 w/r

Clause 18 of Draft Agreement approved by Govt. (as in the)

17(18). Any notice required to be given by the Government or the Chief Engineer under this Agreement shall be in writing signed by the Chief Engineer, and may be served on the Hirer at his Registered Office or affixed or left at the said office or sent by registered post addressed to the Hirer at the aforesaid Registered Office, and any notice required to be given by the Hirer under this agreement shall also be in writing and sent by registered post to the Chief Engineer aforesaid.

DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER (SOUTH

17. Any notice required to be given by the Government or the Chief Engineer under this Agreement shall be in writing signed by the Chief Engineer, and may be served on the Company at its Registered Office or affixed or left at the said office or sent by registered post addressed to the Hirer at the aforesaid Registered Office, and any notice required to be given by the Hirer under this Agreement shall also be in writing and sent by registered post to the Chief Engineer aforesaid.

REMARKS OF PUBLIC WORKS DEPARTMENT (1-2).

~~Clause 18 of the draft agreement approved by Govt.~~

The alterations to be carried out to this clause, with reference to the revised draft now accepted by the licensee, are not ~~material~~ necessary. Hence, the clause already approved by the Government may stand. Since 16 of the draft agreement approved by the Government is to be deleted, clause 18 of the draft already

approved will have to be renumbered as clause 17.

Clause 19 of Draft Agreement
approved by Govt.

19. Any dispute or difference arising between the Hirer and the Government as to the construction of this agreement or the right of the Government or of the Hirer respectively to determine the same or any other question, matter or thing arising hereunder, shall be referred to a single Arbitrator who shall be mutually agreed upon by both the parties. The Arbitrator's decision thereon shall be final, and the provisions of the Indian Arbitration Act, 1940 or any other statutory modification thereof for the time being in force shall apply to any such reference.

Upon every or any such reference, the costs of and incidental to the reference and award respectively shall, subject to the condition that the amount of such costs to be awarded to either party shall not in respect of a monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, costs and expenses incurred by either party, be in the discretion of the Arbitrator who may determine the amount thereof or direct the same to be taxed between solicitor and client or as between party and party and shall direct by whom, to whom and in what manner the same shall be borne and paid.

The percentages above-referred to in this clause are five percent on any such monetary award which does not exceed Rupees ten thousand, three per cent on the next Rupees forty thousand or any part thereof, two per cent on the next fifty thousand or any part thereof, and one per cent on any excess over Rupees one lakh.

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Revised DRAFT RECOMMENDED BY CHIEF OPERATION ENGINEER.

18. Any dispute or difference arising between the Company and the Governor as to the interpretation of this Agreement or the right of the Government or of the Company respectively to determine the same or any other question, matter or thing arising hereunder, such difference shall be referred to a single Arbitrator who shall be mutually agreed upon by both parties. The Arbitrator's decision thereon shall be final and the provisions of the Indian Arbitration Act of 1940 or any other statutory modifications thereof for the time being in force shall apply to any such reference.

Upon every or any such reference the costs of and incidental to the reference and the award respectively shall be subject to the condition that the amount of such costs to be awarded to either party shall not in respect of a monetary claim exceed the percentage set out below of any such award irrespective of the actual fees, costs and expenses incurred by either pary, be in the discretion of the Arbitrator who may determine the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom, to whom and in what manner the same shall be borne and paid.

The percentages above referred to in this Clause are five per cent on any such monetary award which does not exceed Rs.10,000/-, three per cent on the next Rs.40,000/- or any part thereof, two per cent on the next Rs.50,000/- or any part thereof, and one per cent on any excess over Rs.1,00,000/-.

REMARKS OF PUBLIC WORKS DEPARTMENT (I-2).

~~Clause 19 of the draft agreement approved by Govt.~~

The alterations to be carried out to this clause, with reference to the revised draft now accepted by the licensee, are not material. Hence, the clause already approved by the Government may stand. Since 16 of the draft agreement approved by the Government is to be deleted, clause 19 of the draft already approved will have to be renumbered as clause 18.

4.4.54
5/4/54

be may answer his CDS query.

9/4/54

Concluding para of Draft agreement approved by Govt. 37/55

IN WITNESS WHEREOF Chief Engineer for Electricity, acting for and on behalf of and by the order and direction of the Governor of Madras and ..... for and on behalf of the Mangalore Electric Supply Company, Limited, have hereunto set their signatures and the common seal of the Mangalore Electric Supply Company, Limited, was hereunto affixed.

SCHEDULE

(Schedule of Generating Set, Switch Board, Controlling Gear, Auxilieries, Connected Equipments).

Signed, sealed and delivered by the abovenamed Chief Engineer for Electricity acting for and on behalf of and by the order and direction of the Governor of Madras in the presence of:

1. Witness
2. Witness

CHIEF ENGINEER FOR ELECTRICITY

Signed and delivered by the abovenamed acting for and on behalf of the Mangalore Electric Supply Company, Limited, in the presence of:

MANAGING DIRECTOR

1. Witness.
2. Witness.

The Common seal of the Mangalore Electric Supply Company, Limited, was hereunto affixed in the presence of:

1. Witness.
2. Witness.

STD

Concluding portion of revised draft recommended & Cosec's

IN WITNESS whereof Sri.....
Chief Engineer for Electricity acting on behalf and by order and direction of the Governor of Madras has set his hand hereto and the Common Seal of the Mangalore Electric Supply Company Limited was hereunto affixed the day and year first above written.

SCHEDULE:

(Schedule of Generating set, switchboard, controling gear, auxiliaries, connected equipments).

Signed, Sealed and Delivered on
behalf of the Governor of Madras
by .....
in the presence of:

CHIEF ENGINEER FOR ELECTRICITY.

The Common Seal of the Mangalore
Electric Supply Company Limited
was hereunto affixed in the
presence of:

Remarks of P. W. D.

The draft overleaf may stand.

8.4.52